

REMARKS

Rejections Under 35 U.S.C. §103

Claims 22, 28-34 and 79 are rejected as being obvious in light of Kuslich (5,549,679) in view of Gibson (6,413,536). This rejection is respectfully traversed. Pursuant to a telephone interview with the Examiner on 12/13/07, Applicants attach a copy of the Order in Kuslich v. Hochsculer, Interference No. 105,252 (BPAI 2005). (Exhibit A). Applicants direct the Examiner's attention in particular to page 13 of the Order, wherein the Board stated that claims at issue in the interference, now embodied in U.S. Patent No. 7,226,481, directed to a method of treating vertebral bone are patentably distinct from the subject matter of the '679 Patent. Thus, the precise issue of the present rejection was before the Board and the Board ruled that a method of treating vertebral bone is patentable over a method of treating the intervertebral disc space as disclosed in the '679 Patent.

Further, the subject matter of the present Application is a fundamentally new method of treating bone. Prior to the inventions disclosed in U.S. Patent No. 7,226,481 and the present Application, most vertebral bone abnormalities were treated in one of two ways: 1) Vertebroplasty, wherein bone cement is injected into the diseased or fractured bone or 2) Kyphoplasty, wherein a balloon is inflated in the bone to create a cavity, then the balloon is removed, whereupon bone cement is then injected into the cavity.

As discussed with the Examiner on 12/13/07 and stated in Applicants responses dated 1/10/07, 5/29/07 and 6/29/07, incorporated in the entirety herein, the '679 Patent only discloses a method of treating the intervertebral disc space by promoting fusion between adjacent vertebrae. There is absolutely no disclosure in the '679 Patent of treating the vertebral bone itself. The '679

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Patent does not disclose placing a container into bone, nor does the '679 Patent disclose placing a first and a second fill material into the container. Further, Gibson does not disclose a container at all. Because neither of the cited references teach or suggest placing a container into bone, Applicants respectfully request the rejection of Claims 22, 28-34 and 79 be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



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